

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SALAH AL-SHARA,

Defendant-Appellant.

UNPUBLISHED

May 15, 2012

No. 303811

Oakland Circuit Court

LC No. 2010-230343-FH

Before: SERVITTO, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals by leave granted his conviction for larceny from a building, MCL 750.360. We affirm.

On September 15, 2009, defendant took multiple items from the leased premises he had recently vacated. The premises owner asserted that the removed items belonged to him, not defendant, and called police. On February 17, 2010, defendant pleaded no contest to larceny from a building. At the plea hearing, the parties stipulated that the police report contained a factual basis for defendant's plea. At the hearing, the assistant prosecutor, without objection, erroneously summarized the contents of the police report as establishing that defendant committed a breaking and entering. On March 17, 2010, defendant, through new counsel, moved to withdraw his no contest plea, citing multiple reasons why withdrawal was in the interest of justice. At the May 12, 2010, hearing on defendant's motion to withdraw his plea, defense counsel conceded that the police report set forth facts establishing all the necessary elements of larceny from a building. The trial court denied defendant's motion, finding that withdrawal was not in the interest of justice.

Defendant argues that the trial court abused its discretion by denying his motion to withdraw his no contest plea. We disagree. "This Court . . . reviews for an abuse of discretion a trial court's denial of a defendant's motion to withdraw a plea. An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *People v Fonville*, 291 Mich App 363, 376; 804 NW2d 878 (2011) (citations omitted). A defendant does not have an absolute right to withdraw his no contest plea once accepted by the trial court. See *People v Patmore*, 264 Mich App 139, 149; 693 NW2d 385 (2004). A no contest plea is an admission to all essential elements of a charged offense and constitutes an admission of guilt for purposes of the criminal case. *Id.* "Because defendant moved to withdraw

his plea before sentencing, MCR 6.310(B) controls and provides the circumstances under which he may withdraw his plea[.]” *Id.* MCR 6.310(B)(1) provides:

[A] plea may be withdrawn on the defendant’s motion or with the defendant’s consent only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant’s motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C).

Under MCR 6.310(B)(1), in order “[t]o support withdrawal of a plea ‘in the interest of justice’ . . . a defendant has the burden of establishing ‘a fair and just reason for withdrawal of the plea.’ If defendant meets that burden, then the prosecution has the burden of showing that substantial prejudice would result from allowing withdrawal of the plea.” *Patmore*, 264 Mich App at 149-150, quoting *People v Wilhite*, 240 Mich App 587, 597; 618 NW2d 386 (2000).

Defendant argues that withdrawal of his no contest plea was in the interest of justice because the factual basis on which the trial court relied was not sufficient to sustain his no contest plea. “When reviewing whether the factual basis for a plea was adequate, this Court considers whether the fact-finder could have found the defendant guilty on the basis of the facts elicited from the defendant at the plea proceeding.” *Fonville*, 291 Mich App at 377.

A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted. This holds true even if an exculpatory inference could also be drawn and the defendant asserts that the latter is the correct inference. Even if the defendant denies an element of the crime, the court may properly accept the plea if an inculpatory inference can still be drawn from what the defendant says. [*Id.* (quotation omitted).]

Defendant argues that because the assistant prosecutor erroneously summarized the police report as showing that defendant committed a breaking and entering, the factual basis to which the parties stipulated was “manifestly erroneous.” However, as the trial court noted at the motion hearing, the police report, not the assistant prosecutor’s summary of the police report, was what contained the factual basis for defendant’s no contest plea. At the motion hearing, both parties stipulated that the police report formed a factual basis for larceny in a building. Moreover, breaking and entering is not an element of larceny from a building, MCL 750.360, and thus the comment had no bearing on whether there was a factual basis for larceny from a building. *Fonville*, 291 Mich App at 377, 379. Accordingly, we hold that the trial court did not abuse its discretion by determining that a sufficient factual basis existed despite the assistant prosecutor’s erroneous summary of the police report. *Id.* at 376.

Defendant also alleges that the police report did not form a sufficient factual basis for his plea because the report contained exculpatory statements, i.e., defendant’s statements to the police that the items he took belonged to him. However, the mere fact that the police report contained defendant’s exculpatory statements did not preclude the report from forming a sufficient factual basis for his no contest plea. *Id.* at 377. At the motion hearing, defense counsel specifically acknowledged that “[n]otwithstanding that there might be defenses

contained within the report,” the report did “contain evidence on each of the elements” of larceny from a building. Accordingly, the trial court did not abuse its discretion by determining that a factual basis existed from which a trier of fact could have found defendant guilty of larceny from a building despite defendant’s exculpatory statements. *Id.* at 376-377.

Defendant also contends that withdrawal was in the interest of justice because he was denied the effective assistance of counsel during the plea proceedings and the trial court abused its discretion by not granting defendant’s motion on that basis. Defendant never claimed, either in his motion to withdraw his plea or at the motion hearing, that he was denied the effective assistance of counsel and that withdrawal was proper on that basis. Thus, defendant did not preserve this issue for appeal, and we need not consider it. *People v Corteway*, 212 Mich App 442, 447; 538 NW2d 60 (1995); MCR 6.310(D) (“A defendant convicted on the basis of a plea may not raise on appeal any claim . . . that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.”). Nevertheless, we have reviewed defendant’s claim and conclude that defendant failed to establish that his counsel’s conduct fell below an objective standard of reasonableness. *Fonville*, 291 Mich App at 382. The record fully supports that defendant was advised of and knew of his rights in taking the plea, that the plea was knowingly and understandingly made, MCR 6.302(B) and (C), and that there was an adequate factual basis for the plea.

Affirmed.

/s/ Deborah A. Servitto
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood